

NEVADA TAHOE REGIONAL PLANNING AGENCY

901 S. Stewart Street, Suite 5003, Carson City, Nevada 89701
Telephone (775) 684-2720

MINUTES

October 25, 2005

Meeting Place

Department of Conservation and Natural Resources
2nd Floor of the Bryan Building
Stewart Street
Carson City, Nevada

MEMBERS PRESENT

Jim Galloway, Chair
Coe Swobe, Vice Chair
Allen Biaggi
Shelly Aldean
Tim Smith
Charles Ruthe

MEMBERS ABSENT

Dean Heller

OTHERS PRESENT

Pamela Wilcox, Executive Officer
George Taylor, Nevada Office of Attorney General
Clinton Wertz, Division of State Lands
Dan Siegel, California Office of Attorney General
Eva Krause, Washoe County
Joanne Marchetta, TRPA
Phil GilanFarr
Rochelle Nason, League to Save Lake Tahoe
Roger Norman
Shirley Kliman

1.a. ROLL CALL

The meeting was called to order by Chair Jim Galloway at 8:30 a.m. A roll call was taken and a quorum was present. (Dean Heller was absent.)

1.b. APPROVAL OF AGENDA

The agenda was approved with the exception that items may be rearranged.

1.c. APPROVAL OF MINUTES OF THE SEPTEMBER 29, 2005 MEETING

Mr. Galloway asked for the approval of the minutes.

Coe Swobe made a motion to approve the minutes of the September 29, 2005 meeting. The motion was seconded by Shelly Aldean and passed by the affirmative vote of all members present (6-0).

2. DISCUSSION REGARDING ENCLOSED WALKWAY PROPOSAL

Chair Galloway suggested leading the discussion by examining the walkway issue first. He asked if others thought item 4 was necessary to address prior to item 5.

Mr. Taylor then explained that he provided the board with a one page sheet the outlined possible scenarios addressing their questions from the prior meeting related to the walkway issue.

Chair Galloway stated he felt the board did not need to address Article I.

Mr. Taylor responded that the current definition of structure housing gaming does not include appurtenances. Findings could be made by the board that shows the structure was not attached in a definite manner. Chair Galloway said the finding would have to indicate the walkway had no definite connection. He further stated information on the record from Washoe County that the walkway is a separate structure with regards to Universal Building Codes. He further stated that even if connected the walkway could be considered a structure not housing gaming.

Ms. Aldean reiterated that a one inch gap would remain between the walkway and buildings.

Mr. Biaggi thought the board could go with the separation definition idea.

Coe Swobe suggested findings be created to address the situation. He said the board could amend the definition of a structure housing gaming.

1. Structure not housing gaming
2. Project is entirely within Nevada
3. Walkway not joined in definite manner
4. UBC codes considers the structure separate

These combination of factors as found by the board and as determined by the NTRPA board are the findings made to approve this application.

Mr. Swobe motioned the approve the request based on these factors. The motion was seconded by Ms. Aldean.

Chari Galloway opened the matter up for public comment.

Mr. Siegel of the California's AG's office spoke. He suggested language in the findings that contained 2 prohibitions; square footage and no additional gaming. He also thought that whether or not the structure was separate was skirting the edges of the compact and he wanted a minimal action only. In more detail he suggested the following:

1. Ensure the walkway connection is a minimum size needed and that it is for the purpose is for "health and safety"

2. Apply only to existing structures and not to new buildings

He considered the walkway as a solution to address current building issues only.

Chair Galloway suggested adding two findings;

1. The walkway will not be excessive in size and;
2. The walkway is for health and safety purposes

He also mentioned that the use still needs to meet TRPA guidelines as well.

Ms. Aldean suggested the minimum size necessary and health and public safety language and no advertising in order to secure board approval.

Chair Galloway mentioned that getting pertinent comments is necessary and that he thought 2 items should be added including; public safety....and a size criteria such as minimum necessary or not excessive.

Ms. Aldean also said that the size issue could be left to TRPA.

The board members then made disclosure that each had received a call from the applicant/owner of the Project expressing interest that the project get approved. He also said that there was no request for advertising in the agreement.

Ms. Aldean commented on the expressed desire to have a prohibition on advertising. She felt it was pushing the envelope too far. She did not see it as a vehicle to support gaming activities.

Mr. Smith agreed with Ms. Aldean about the issue of gaming.

It was agreed to hear from the applicant on the issues raised on the walkway thus far.

Mr. Phil GilanFar then spoke on behalf the owner of the Crystal Bay Club.

He stated the following points;

1. minimum size is already requested in request
2. applicant is amenable to language for size
3. would like signage only in walkway

Mr. Norman interjected that the request does not ask for advertising in the corridor and that he would not have asked for advertising with the walkway.

Ms. Aldean suggested the board make the findings for any approval "bullet-proof".

Chair Galloway then suggested the board remove any reference to advertising and consider it unnecessary.

Coe Swobe then asked to refine the findings based on discussions.

Mr. Ruthe inquired about the length of the walkway.

The applicant stated it was 35 feet in length and 7 feet wide

Mr. Ruthe also expressed concern about advertising in the walkway.

Chair Galloway stated that he did not feel they were setting a precedent regarding advertising in the walkway.

A motion was made by Chair Galloway to approve the walkway with the following restrictions:

1. Structure not a structure housing gaming
2. Project is entirely within Nevada
3. Walkway not joined in definite manner -UBC codes considers the structure separate
4. Ensure the walkway connection is a minimum size needed and that it is for the purpose is for "health and safety"
5. The walkways findings are only applicable to existing structures
6. Any reference to advertising in the walkway would be removed from the application.

The motion passed and the request for a walkway at the Crystal Bay Club was approved unanimously.

3. ACTION ON APPOINTMENT FOR AT LARGE MEMBER FOR NTRPA

Mr. Swobe left the room and the NTRPA board voted unanimously to re-appoint Mr. Swobe and commended his effort in the past with the board.

4. POSSIBLE ACTION ON PARTICIPANTS SPORTS FACILITY/SUMMER OUTDOORS EVENT CENTER PROPOSED TO BE LOCATED ON THE CRYSTAL BAY CLUB PARKING STUCTURE

Ms. Wilcox then summarized several options presented in the staff report to amend the NTRPA ordinance 1980-1 section 3.2 (which would be a new section)

1. Specifically identify and describe the proposed use(s) or activity(ies);
2. Specifically identify the area of the structure where the use or activity is proposed to be located, and include plans showing any modifications to the structure or other accommodations necessary for the proposed use(s);
3. Describe [how?] [the extent to which?] each proposed use or activity will further the attainment of one or more thresholds established under the Tahoe Regional Planning Compact; and
4. Demonstrate that proposed uses or activities do not include activities that would occur in restaurants, showrooms, convention facilities or other public areas of a structure housing gaming, as proscribed by the Tahoe Regional Planning Compact, Article VI, section d (3).
5. Demonstrate that each proposed use or activity does not involve activities related to gaming which are proscribed in the Tahoe Regional Planning Compact, Article VI, section d (3), i.e., activities including but not limited to those occurring in restaurants, showrooms and convention facilities."

Ms. Wilcox emphasized the board could adopt any or all of the language options presented or modify the language further.

Ms. Aldean commented that disallowing a restaurant might prohibit food service.

Ms. Wilcox replied that the draft changes were kept close to the compact and that each applicant could make the case for any accessory use.

Chairman Galloway asked if all three items (restaurants, showrooms and convention facilities) were mentioned in the compact specifically. Ms. Wilcox responded yes.

Discussion ensued on the future process for approvals related to non-gaming use requests.

Chairman Galloway asked the board of it should be a staff or board action. Ms. Wilcox replied that it was not included as a staff item for review.

Mr. Siegel then interjected that the compact section 4 (f) does not allow for the conversion of public to private space and that external modifications were included in this. He felt that with the ice rink use was "skating on thin ice" with regards to the intent of the compact while the other uses would were not acceptable in his view.

Shirley Kliman who has property one block away was concerned about lighting and noise issues of the proposed uses. She said there was homes 30-50 feet away and that many have not been contacted regarding the proposed action. She was supportive of the ice rink idea however.

Ms. Wilcox added that 5 letters had been submitted by adjacent owners expressing concern over the proposed use. Ms. Kliman added there were three more being added to the record.

Rochelle Nason, Executive Director of the League to Save Lake Tahoe, expressed concerns similar to Mr. Siegel's. She emphasized that the compact allows for restricted gaming activities only. She supported a narrow interpretation of the request with following comments.

- The use stills needs TRPA approval
- The request should be tied to outdoor recreation and thresholds
- She warned against using "tortured and expanded language of the compact"
- She urged restraint in approving the request

Mr. James Clark of 255 Glen Way provided comment on the request. He suggested that the board understood the issues and that he supported the ice rink concept and other uses.

Mr. GilanFar commented on behalf of the applicant He was aware of the possible impacts from the request and he was ready to go with other reviews to proceed. He added that he was not asking for replacement of the lost area in a conversion from private to public.

He felt there was a parity issue in that other nearby casinos are able to use their parking lots for myriad of events and the applicant was essentially penalized for having a parking structure and the desire to utilize its space. He also expressed concern that the structure be utilized year round for a multitude of events , not just the ice rink.

Mr. Remsen Paul commented on behalf of the Ice Rink Foundation that he wanted to see approval.

Arnold Landau also commented but with concern over the potential impacts on adjacent properties for any expanded uses. He further asked if TRPA precluded further use of the existing structure.

Joanne Marchetta of TRPA commented on behalf of her agency. Her concerns were that if the approval by NTRPA was too broad then it may result in a denial by her agency.

End of comment on proposed change in use

Ms. Aldean asked if the board needed to clarify the definition for section 3.2

Ms. Marchetta replied that temporary or seasonal uses or approved by TRPA with review. The Ice rink would fit these categories.

Mr. Swobe expressed concern that the enabling legislation was too broad at section 3.2 and that the board would likely need more specific approval criteria.

Chair Galloway stated that he had met with Mr. Norman and they both agreed on the need for an outer and inner envelope so that the applicant could proceed with assurance. He asked the applicant if the building could be modified for these proposed uses. The applicant replied that it would be a risk without knowing the approved uses.

Ms. Aldean added that temp/seasonal could include indoor/outdoor uses.

Mr. Galloway said that any seating could be removed.

Mr. Biaggi suggested combining TRPA thresholds with the proposed seasonal uses. He also said the language could state a "parking garage housing" (like d(1)). He also acknowledged speaking with Mr. Norman several times by phone.

Ms. Aldean and Mr. Swobe also mentioned meeting one month ago on the site.

Mr. Galloway expressed concern over using thresholds for NTRPA approval criteria. He liked the temporary and seasonal qualifiers.

Ms. Aldean recommended using the parking garage language and the 3rd alternative listed by staff. She wanted to keep the approval diversified.

Mr. Swobe suggested combining 1 and 2 with proposed location being 3rd.

Tim Smith replied that he concurred with Mr. Swobe and Ms. Aldean to keep the language broad.

Discussion ensued as to whether or not item C should be included. Mr. Taylor was questioned on this point and he stated it was within the board's discretion for inclusion.

Mr. Biaggi and Ms. Aldean stated that the requirements only ask the applicant to state whether or not a threshold is affected and to provide information if it does.

Mr. Galloway then asked if the applicant would need to specify the extent of any improvement, if any and and/or how the use would move a threshold.

Ms. Aldean replied that she thought the applicant would simply need to state if a threshold was improved and to what extent.

Mr. Galloway then stated that d should be removed. The applicant would still need TRPA approval for any use.

Ms. Wilcox then interjected that an approval would still be required. She then re-stated section d(1).

Chair Galloway suggested referring to the compact and article 6.

Mr. Swobe made a motion to approve the draft ordinance language with changes by combining A&B and adding seasonal and temporary language. He also suggested requiring describing the extent of any threshold change if any.

Chair Galloway requested the applicant to list activities to see if they qualify.

A brief recess was held to print a draft ordinance for review and signature approval.

After one minor correction the board approved the motion to amend the ordinance.

Mr. GilanFar stated the desire to put off some issues till next year but to still get a limited list approved.

Ms. Wilcox listed four uses to the board.

Mr. Norman said that he need to have approval for more than the ice-rink to be able to move forward with the improvements to the structure.

Mr. Swobe asked the board if there was sufficient information to approve other uses.

Mr. GilanFar then presented the requested uses.

They included:

- Ice Rink
- Fundraisers
- Car & Bike shows
- Art shows
- Rollerblading
- Concerts 200-100 people

Ms. Kliman asked that the board take more time to approve the uses to gather additional information on each use.

Ms. Nason also expressed concern about the lack details for each proposed use. She stated that any event linked to "Hot August Nights" was not acceptable as a non-gaming related event.

Chair Galloway inquired if impacts would be addressed by TRPA at a later date.

Ms. Marchetta commented that TRPA will address each uses separately for potential impacts if they are considered non-gaming related.

Ms. Wilcox then read Article 6, section(f) of the ordinance. It read that if any exterior modification are made to a gaming facility converting private to public space that results in impacts then that would be prohibited. She continued by saying that it appears there was no escape clause and that certain activities like concerts might be crossing the line as an "expressed prohibition". She also stated that according to the NV AG's opinion that entertainment would be problematic.

Mr. GilanFar then asked the board to view the project as a whole and that there was a farness issue to the decision. He also stated that prohibitions might be considered a takings.

Chairman Galloway then referred the comments to staff.

Mr. Taylor asked the applicant if the top floor of the parking structure would ever be returned to parking. The owner Mr. Norman responded by saying "no".

Their was discussion as to whether or not a temporary or seasonal use could be considered when the structure housing the use would be altered permanently to allow these temporary/seasonal uses.

Mr. GilanFar interjected by disagreeing and saying that someday there may be request to build the unbuilt tower on top of the garage or more rooms.

Ms. Aldean stated that she was unaware of a definition in the compact for gaming related activities.

Mr. Taylor concurred that it did not exist and referred the question to Mr. Swobe.

Mr. Swobe recalled this was an issue that was left for NTRPA board to consider with discretion in the future.

Chairman Galloway then closed the comment section of the hearing for item #2. He stated if the board felt the description of the uses were sufficiently described that vote on their approval could occur based on the new ordinance.

Ms. Aldean stated that she felt the proposed uses were consistent with the compact and were not regulated uses by NTRPA.

Mr. Swobe motioned to approve all requested uses within the 30,000 Sq. ft area.

Ms. Wilcox read aloud the proposed uses again including a farmers market.

Mr. Swobe then re-motioned to approve.

Chairman Galloway then seconded the motion and asked who was in favor and the motion passed unanimously.

5. BOARD MEMBER COMMENTS

There were no additional Board member comments.

6. PUBLIC COMMENTS

There were no additional public comments.

7. ADJOURN

The meeting was adjourned at 11:30 p.m.

Pamela Wilcox, Executive Officer

Note: These minutes should be considered draft minutes pending their approval at a future meeting of the Nevada Tahoe Regional Planning Agency governing board. Corrections and additions could be made prior to approval.

The meeting was tape recorded. Anyone wishing to listen to the tapes may call (775) 684-2720 for an appointment. The tape will be retained for two years.